

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

H/S

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BILL DRAFT 2013-LRz-139\* [v.3] (04/11)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

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Short Title: DES/Garnishment/Employer Receipts.

(Public)

Sponsors: Representative Howard./Senator Rucho (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT RELATING TO THE GARNISHMENT AND ATTACHMENT OF EMPLOYERS'  
3 CREDIT CARD RECEIPTS IN THE COLLECTION OF UNPAID EMPLOYMENT  
4 TAXES.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 1-359 reads as rewritten:

7 **"§ 1-359. Debtors of judgment debtor may satisfy execution.**

8 (a) After the issuing of an execution against property, all persons indebted to the  
9 judgment debtor, or to any one of several debtors in the same judgment, may pay to the sheriff  
10 the amount of their debt, or as much thereof as is necessary to satisfy the execution; and the  
11 sheriff's receipt is a sufficient discharge for the amount paid.

12 (b) When the Division of Employment Security of the Department of Commerce  
13 (Division) prevails in a civil action against an employer to collect unpaid employment taxes  
14 under G.S. 96-10(b), the Division may attach or garnish the employer's credit card receipts in  
15 payment of the unpaid taxes in the manner provided by subsection (a) of this section. Direct  
16 receipt by the Division is a sufficient discharge for the amount paid by a credit card company  
17 or clearinghouse."

18 **SECTION 2.** G.S. 96-10(b)(1) reads as rewritten:

19 "(b) Collection. –

20 (1) If, after due notice, any employer defaults in any payment of contributions or  
21 interest thereon, the amount due shall be collected by civil action in the  
22 name of the Division, and the employer adjudged in default shall pay the  
23 costs of such action. Civil actions brought under this section to collect  
24 contributions or interest thereon from an employer shall be heard by the  
25 court at the earliest possible date, and shall be entitled to preference upon the  
26 calendar of the court over all other civil actions, except petitions for judicial  
27 review under this Chapter and cases arising under the Workers'  
28 Compensation Law of this State; or, if any contribution imposed by this  
29 Chapter, or any portion thereof, and/or penalties duly provided for the  
30 nonpayment thereof shall not be paid within 30 days after the same become  
31 due and payable, and after due notice and reasonable opportunity for  
32 hearing, the Division, under the hand of the Assistant Secretary, may certify  
33 the same to the clerk of the superior court of the county in which the  
34 delinquent resides or has property, and additional copies of said certificate



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for each county in which the Division has reason to believe the delinquent has property located. If the amount of a delinquency is less than fifty dollars (\$50.00), the Division may not certify the amount to the clerk of court until a field tax auditor or another representative of the Division personally contacts, or unsuccessfully attempts to personally contact, the delinquent and collect the amount due. A certificate or a copy of a certificate forwarded to the clerk of the superior court shall immediately be docketed and indexed on the cross index of judgments, and from the date of such docketing shall constitute a preferred lien upon any property which said delinquent may own in said county, with the same force and effect as a judgment rendered by the superior court. The Division shall forward a copy of said certificate to the sheriff or sheriffs of such county or counties, or to a duly authorized agent of the Division, and when so forwarded and in the hands of such sheriff or agent of the Division, shall have all the force and effect of an execution issued to such sheriff or agent of the Division by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. Provided, however, the Division may in its discretion withhold the issuance of said certificate or execution to the sheriff or agent of the Division for a period not exceeding 180 days from the date upon which the original certificate is certified to the clerk of superior court. The Division is further authorized and empowered to issue alias copies of said certificate or execution to the sheriff or sheriffs of such county or counties, or to a duly authorized agent of the Division in all cases in which the sheriff or duly authorized agent has returned an execution or certificate unsatisfied; when so issued and in the hands of the sheriff or duly authorized agent of the Division, such alias shall have all the force and effect of an alias execution issued to such sheriff or duly authorized agent of the Division by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. Provided, however, that notwithstanding any provision of this subsection, upon filing one written notice with the Division, the sheriff of any county shall have the sole and exclusive right to serve all executions and make all collections mentioned in this subsection and in such case no agent of the Division shall have the authority to serve any executions or make any collections therein in such county. A return of such execution, or alias execution, shall be made to the Division, together with all moneys collected thereunder, and when such order, execution, or alias is referred to the agent of the Division for service the said agent of the Division shall be vested with all the powers of the sheriff to the extent of serving such order, execution or alias and levying or collecting thereunder. The agent of the Division to whom such order or execution is referred shall give a bond not to exceed three thousand dollars (\$3,000) approved by the Division for the faithful performance of such duties. The liability of said agent shall be in the same manner and to the same extent as is now imposed on sheriffs in the service of executions. If any sheriff of this State or any agent of the Division who is charged with the duty of serving executions shall willfully fail, refuse, or neglect to execute any order directed to him by the said Division and within the time provided by law, the official bond of such sheriff or of such agent of the Division shall be liable for the contributions, penalty, interest, and costs due by the employer. Any judgment that is executable and allowed under this section shall be subject to attachment and garnishment under G.S. 1-

359(b) in payment of unpaid taxes that are due from the employer and collectable under this Article."

**SECTION 3.** This act is effective when it becomes law and applies to judgments entered on or after that date.